IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

Bail Appl..No. 4287 of 2007(K)

(CRIME NO.251/07 OF KANNUR TOWN POLICE STATION)

: PETITIONERS/ACCUSED NO.1 AND 2

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1. KUTTAN @ ROBIN BIJU, S/O. JOHN IGNETIOUS, AGED 32 YEARS, RESIDING AT HOUSE NO.142 C, BURNACHERRY, KANNUR I AMSOM, KANNUR KARA DESOM, KANNUR TALUK AND DISTRICT.

2. SHIJOJ, S/O. JOHN IGNETIOUS, AGED 30 YEARS, RESIDING AT HOUSE NO.142 C, BURNACHERRY, KANNUR I AMSOM, KANNUR KARA DESOM, KANNUR TALUK AND DISTRICT.

BY ADV. SRI.SUNIL NAIR PALAKKAT

RESPONDENTS: COMPLAINANT/STATE

STATE OF KERALA, REPRESENTED BY STATION HOUSE OFFICER, KANNUR TOWN POLICE STATION.
(THROUGH PUBLIC PROSECUTOR OF THE HIGH COURT OF KERALA).

BY PUBLIC PROSECUTOR ADV.SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 16/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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B.A.No.4287 of 2007

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Dated this the 16th day of July, 2007

ORDER

Application for anticipatory bail. The petitioners face allegations under Section 326 IPC. On account of prior animosity, the petitioners brothers, are alleged to have assaulted the defacto complainant in furtherance of their common intention. It is now alleged that dangerous stone was used for committing the offence. The alleged incident took place on 25.5.07. The F.I. Statement has been filed on 27.5.07.

2. The learned counsel for the petitioner submits that on account of prior animosity the accused persons have been unnecessarily arrayed as accused. The counsel places reliance on the wound certificate which shows that one person was involved in committing the offence. Further reliance is placed on the nature and allegations of injuries. In the earliest wound certificate, it is suggested that only one person attacked the victim and such infliction of injury was without using any weapon. He also relies on the nature of injury suffered, which also suggests that no weapon was used for committing the offence. The graver allegation under Section 326 IPC has been made only to vex and harass the petitioner, submits the learned

counsel for the petitioners.

3. The learned Public Prosecutor opposes the application. But not withstanding the opposition, I am satisfied that this is a fit case where anticipatory bail can be granted to the petitioners in the light of the circumstances to which brief reference has already been made. I shall carefully avoid detailed reference to the facts and shall not attempt to resolve the factual controversies at this stage. Suffice it to say that I am satisfied that anticipatory bail can be granted to the petitioners subject of course to appropriate and strict conditions.

4. In the result, this application is allowed. The following directions were issued under Section 438 Cr.P.C.:-

i) The petitioners shall appear before the Learned Magistrate having jurisdiction at 11 a.m on 23.07.2007. They shall be enlarged on regular bail on their executing a bond for Rs.25,000/-(Rupees Twenty Five thousand only) each with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

ii) The petitioners shall make themselves available for interrogation before the investigating officer between 10 a.m. and

4p.m on 24.07.2007 and 25.07.07. During this period the petitioners can be questioned by the Investigating Officer in custody and thereafter they shall make themselves available for interrogation before the investigating officer between 10 a.m and 12 noon on all Mondays and Fridays for a period of two months. Subsequently, they shall appear before the Investigating Officer, as and when directed by the Investigating Officer in writing to do so.

iii) If the petitioners do not surrender before the learned Magistrate as directed in clause (i), all directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with them in accordance with law.

iv) if the petitioners were arrested prior to their surrender on 23.07.07 to the learned Magistrate as directed in clause (i) above, they shall be released forthwith on their executing a bond of Rs.25,000/-(Rupees Twenty five thousand only) without any sureties undertaking to appear before the learned Magistrate on 23.07.07 as directed in clause(i) above.

(R.BASANT, JUDGE)

sj